IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 575

THE FIRST NATIONAL CITY BANK OF NEW YORK,
Petitioner,

vs.

INTERNAL REVENUE SERVICE OF THE UNITED STATES TREASURY DEPARTMENT,
Respondent.

REPLY TO RESPONDENT'S MEMORANDUM IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

JOHN A. WILSON
MACILBURNE VAN VOORHIES
MICHAEL J. DESANTIS
Counsel for Petitioner

SHEARMAN & STERLING & WRIGHT
20 Exchange Place
New York 5, N. Y.
Of Counsel

January 11, 1960

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 575

THE FIRST NATIONAL CITY BANK OF NEW YORK,

Petitioner.

vs.

INTERNAL REVENUE SERVICE OF THE UNITED STATES TREASURY DEPARTMENT,

Respondent.

REPLY TO RESPONDENT'S MEMORANDUM IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Revenue Service does not deny that questions of great public importance, never before determined by this Court, are here presented. Yet it fails to answer any of those questions and seeks to brush off City Bank's petition by resort to a series of bland assertions. Such failure is an implied admission of inability really to meet the issues.

I

Thus, notwithstanding our *uncontradicted proof* of Panamanian law, the Revenue service asserts that the constitutional and statutory provisions of the Republic of Panama "in no way forbid the owner of documents from showing them to anyone or transporting them out of the country." They "simply prohibit extra-judicial seizures", the Revenue Service states, and "prescribe the procedure and scope of discovery and inspection proceedings in Panamanian courts."

The contention of the Revenue Service is contrary to the Constitution of the Republic of Panama which expressly declares that "correspondence and other private documents are inviolable" and not subject to seizure or examination "except by provision of a *competent authority* and by means of *legal formalities.*"

Obviously, the "competent authority" to which the Panama Constitution refers is a Panamanian court and not a court of the United States or the United States Revenue Service or any other United States authority. And the "legal formalities" to which the Constitution refers are expressly set forth in the Judicial Code and in the Code of Commerce of the Republic of Panama (Pet. pp. 7-11).

The Code of Commerce of the Republic of Panama (R. p. 40a) specifically requires that the examination of any books and records "must be made in the office of the merchant", and, in Panama, a bank is a "mer-

chant" (R. p. 32a). It further provides that those records must be examined "in the place where the books are located" and that they may not be removed even to the place, in Panama, where the proceedings are held, much less transported outside the Republic of Panama, to the United States.

The constitutional and statutory requirements of Panama are the controlling requirements. Patently, no decree of a United States Court and no directive of any other United States authority will suffice. The procedure which the Revenue Service defends would clearly involve an "extra-judicial seizure" and examination of branch records, in violation of the Constitution and laws of the Republic of Panama.

II

The Revenue Service further argues that the Head Office of the Bank has *actual* control of the records of its Panama branch and that this is sufficient to support an order for their production in New York.

Ignored is the fact, that when a bank qualifies a branch to do business in a foreign country it submits to the laws of that country, and when the laws of that country prescribe the conditions under which records of the branch may be subpoenaed or examined, Head Office does not have *legal control* over those records, except as it acts within the framework of the foreign law. For more than two decades, records of a foreign branch of a National Bank have been uniformly held to be "*not so within the control*" of Head Office as to be subject to production by summons served upon Head Office (Pet. pp. 14-16).

Notwithstanding, the Court of Appeals and the Revenue Service maintain, in effect, that the production in New York of the records of the Panama branch is wholly controlled by the sovereign power of the United States. And, indeed, the Court of Appeals invites the Bank to close the doors of its branch if it feels that it cannot obey the directive of the Court of Appeals without violating the laws of Panama.

Conclusion

The decision of the Court of Appeals, we submit, accords neither with law nor justice, and if allowed to stand in violation of established principles of international comity will undoubtedly further disrupt amicable relations between the United States and the Republic of Panama. The petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN A. WILSON
MACILBURNE VAN VOORHIES
MICHAEL J. DESANTIS
Counsel for Petitioner

SHEARMAN & STERLING & WRIGHT
20 Exchange Place
New York 5, N. Y.
Of Counsel

January 11, 1960